



JOINT COMMENTS OF THE MINNESOTA PUBLIC UTILITIES COMMISSION AND MINNESOTA DEPARTMENT OF COMMERCE

I. INTRODUCTION

The Minnesota Public Utilities Commission (PUC) and Minnesota Department of Commerce (DOC) respectfully submit these comments in response to the Federal Communications Commission (FCC) May 10, 2013 Public Notice (*Notice*) DA No. 13-1016, in which the FCC seeks comment on several potential “real-world” technology transition trials. The Minnesota PUC and DOC regulate intrastate telecommunications activities, and have an interest in ensuring that the proposed trials are designed to elicit transparent, actionable data, while protecting consumers and promoting competition.

At a minimum, the Minnesota PUC and DOC encourage trials that help drive appropriate and expeditious classification of Voice over Internet Protocol (VoIP), so that all industry stakeholders may be empowered with the certainty needed to effectively address this technology going forward. Regardless of technology, a key objective of the trials should be to cultivate a partnership with the states that leverages states’ unique expertise in upholding consumer protection, network reliability and public safety, competition, interconnection, universal service, regulatory diversity, evidence-based decision making, and broadband access, affordability and adoption.¹

II. DISCUSSION AND RECOMMENDATIONS

A. *THE PROPOSED TRIALS SHOULD GENERATE TRANSPARENT, ACTIONABLE DATA*

In its *Notice* proposing real-world trials the Technology Transitions Policy Task Force (Task Force) stated, “The goal of any trials would be to gather a factual record to help determine what policies are appropriate to promote investment and innovation while protecting consumers, promoting competition, and ensuring that emerging all-Internet Protocol (IP) networks remain resilient,” and to, “...assist the Commission in ensuring that policy decisions related to ongoing technology transitions are grounded in sound data.”

The Minnesota PUC and DOC contribute the following thoughts and recommendations in relation to the proposed trials, and respectfully request that the Task Force consider them as it embarks on this important initiative.

¹ “Principles of Cooperative Federalism” as outlined by the National Association of Regulatory Utility Commissioners’ Federalism Task Force in its *Draft* Report on Cooperative Federalism and Telecom in the 21st Century (June 2013).

1. End-User Trial Participants

Particularly as it relates to issue-specific trials such as interconnected VoIP or wireline-to-wireless, it is critical that the resulting data represents a broad array of consumers facing a variety of consequences of technological change. At a minimum, end-user participants should include commercial and residential consumers in urban, rural and remote locations, a range of business sizes, and businesses with critical functions currently supported exclusively by traditional wireline service. Additionally, trials should be conducted in geographic areas with diverse terrains and weather patterns.

The *Notice* seeks comment on whether consumers in a trial area should have an option to participate, or whether mandatory trials would be beneficial. While a mandatory trial may reflect the “real world” for consumers whose choices are diminished following a technology transition, removing consumer choice, even in a temporary trial setting, is concerning. We suggest that optional trials could generate similarly helpful data, provided there are monitoring and reporting requirements in place to capture important consumer choice information. For example, an optional trial could track residential and/or commercial consumers that opt out of a trial, despite compelling benefits or incentives to participate, and their reasons for opting out. Trials could also track the type of commercial consumers that opt out, in whole or in part, which business functions they choose not to transition, and why.

Finally, it is important to consider whether and how consumers may be compensated for any costs and/or losses they incur as a result of trial participation, and what security measures providers put in place to prevent potentially negative consumer impacts.

2. Monitoring and Reporting

Providers participating in the trials should be required to collect and submit a variety of data, and the data should be made as broadly accessible as possible. Absent comprehensive monitoring and appropriate data transparency, the Minnesota PUC and DOC believe the FCC risks conducting trials that merely reflect providers on their best behavior, delivering services in best-case scenarios, to generate marketable results.

It is important that participating providers track any potentially negative consumer impacts, such as consumers not served due to geographic reach of the available technology, instances where replacement services are not equivalent to current service, new consumer device requirements or procedures, quality, safety, or reliability issues, and any disparity of cost and availability, such as product features or speeds not available in all locations. Additionally, providers should report accessibility issues such as higher rates for certain consumers, services offered only as part of a bundle, any consumers not eligible to participate in a trial area, and why (e.g., location, income, disability, other). Finally, participating providers should be required to track and report any interconnection issues that arose, whether related to regulated or non-regulated, “good faith” negotiations.

The *Notice* stated that the Task Force is interested in analyzing the consumer experience in relation to one or more of the trials. To supplement providers' reports, we recommend surveying end-user participants (both prospective and actual) to assess the consumer experience from their perspective. This process could help generate additional information related to why some consumers did not participate (whether by choice or circumstance), which offerings were viewed as most or least beneficial, trial-related costs, losses and resulting compensation (if any), and whether trial communications were sufficient in type, timing and content.

B. THE PROPOSED TRIALS SHOULD DRIVE EXPEDITIOUS CLASSIFICATION OF VOICE OVER IP

As emphasized by the National Association of Regulatory Utility Commissioners' (NARUC) Federalism Task Force in its *Draft Report on Cooperative Federalism and Telecom in the 21st Century*, the 1996 Telecommunications Act (the Act) is technology agnostic and therefore any rewrite of the Act must not be linked to a specific technology, but, "...to the salient features of a particular service, such as whether it is competitive and how consumers and small businesses depend on it."²

Consistent with the spirit of the Act, in 2004 the Minnesota PUC ordered that Vonage's Digital Voice service is a "telephone service" as defined by Minnesota law, and therefore, subject to applicable state statutes and regulations. Subsequently, the Minnesota PUC was preempted by the FCC, which concluded, "Digital Voice cannot be separated into interstate and intrastate communications for compliance with Minnesota's requirements without negating valid federal policies and rules."³

Like state commissions, consumers are directly impacted by the FCC's characterization of VoIP. At times, consumers are positively impacted. When the FCC imposes certain "telecommunications service" requirements on VoIP providers, for example, consumers benefit by subscriber access to 911 service, accommodations for people with disabilities, adherence to CPNI data privacy rules, local number portability, contributions to the federal Universal Service Fund, and reporting of service outages.⁴ When the FCC characterizes VoIP as an "information service," consumers can be negatively impacted. This was recently demonstrated when a customer filed a complaint against Verizon, alleging that Verizon changed their telecommunications service provider without obtaining the required authorization and verification ("slamming").⁵ Despite a clear prohibition against slamming by providers of

² *Id.* at page 5 (quoting the NARUC Legislative Task Force Report on Federalism and Telecommunications, July 2005, page 4).

³ *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267 (November 12, 2004) (*Minnesota Vonage Order*).

⁴ See Frieden, R. The mixed blessing of a deregulatory endpoint for the public switched telephone network. *Telecommunications Policy* (2012), <http://dx.doi.org/10.1016/j.telpol.2012.05.003> for an in-depth discussion of the potential issues raised by migration from the legacy PSTN.

⁵ *In the Matter of Verizon, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, IC No. 11-S3251566, Order, DA 13-1294 (May 31, 2013); See 47 C.F.R. §§ 64.1100 – 64.1190.

telephone exchange service or telephone toll service, the FCC found that, as a provider of FiOS Digital Voice service (a VoIP service) Verizon did not violate the rules and the complaint was denied.

A real-world VoIP interconnection trial could help add clarity to this dichotomy. To that end, it is imperative that VoIP interconnection trials are designed to openly contemplate the potentially negative consumer impacts of interconnected VoIP being classified as an “information service.” Relevant considerations could include the telecommunications service requirements listed in the preceding paragraph, as well as the following:

- Scope and reach of voluntary versus mandatory interconnection agreements
- Cost of VoIP access in rural and high cost areas (with/without USF funding)
- Areas with no access to interconnected VoIP or a functional equivalent
- Retention of a low-cost, basic telephone service option (with no additional features, and no bundles)
- Other potential challenges related to diminished VoIP regulation:
 - Resolution of provider disputes and unfair or anticompetitive conduct
 - Processing of consumer complaints
 - Prevention of discrimination
 - Performance monitoring and/or access to performance data
 - Ability to address voluntary “good faith” service commitments

State and federal collaboration and shared jurisdiction are key to ensuring that all consumers, including low income consumers, those in high cost areas, those with special needs, and small businesses, continue to have affordable access to quality, reliable voice service.

C. THE PROPOSED TRIALS SHOULD CULTIVATE AN ONGOING PARTNERSHIP BETWEEN THE FCC AND THE STATES THAT LEVERAGES THE STATES’ UNIQUE EXPERTISE

States should play an integral role in the proposed trials, in the interest of ensuring a positive outcome for their commercial and residential trial participants, as well as all state consumers who will ultimately be subject to regulations and laws informed by the trials. For example, states may have an interest in the selection of geographic trial areas, and may be well-positioned to oversee the collection and distribution of trial-related data. States may also benefit by participating in trial design, as it relates to interconnection, public safety, and consumer protection.

Beyond the trials, states’ expertise should continue to be leveraged as intended by the Act, and emphasized by the NARUC Federalism Task Force:

The States, the FCC, and industry all have roles to play in ensuring ubiquitous access to reliable, affordable communications... the States should continue to maintain the primary and immediate responsibility for end-user consumer protection, for ensuring the

availability and affordability of universal service, and for ensuring service reliability, safety, and service quality... collaboration among all involved in determining telecommunications policy will ensure that those policies best meet the needs of those they are designed to serve.⁶

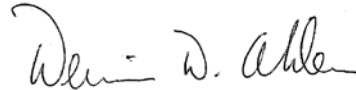
III. CONCLUSION

The Minnesota PUC and DOC support a thoughtful transition to innovative technologies and services, whereby industry objectives and outcomes are consistent with consumer interests and the intent of the Act. We advocate a balanced approach to regulatory reform, technology-neutral policies, and a collaborative system that preserves the states' vital regulatory role and our ability to provide meaningful insight into the needs of our residents. We are encouraged by the work of the Technology Transitions Policy Task Force, and appreciate the opportunity to comment on the proposed real-world trials as a means of gaining valuable visibility into the consumer implications of the ongoing technology transition. This information will be useful not only to states still contemplating deregulation measures, but to those assessing whether and how already adopted measures could be improved.



BEVERLY HEYDINGER
Chair
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

Respectfully submitted,



DENNIS D. AHLERS
Assistant Commissioner,
Division of Energy Resources
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101

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⁶ See NARUC *Draft Report on Cooperative Federalism and Telecom in the 21st Century* (June 2013), pages 7, 8 and 13.